

**AGREEMENT BETWEEN
LAKE COUNTY, FLORIDA AND**

**FOR
TRANSPORTATION OPERATOR
RFP #13-0209**

This is an Agreement between Lake County, Florida, a political subdivision of the State of Florida, hereinafter referred to as the "County", by and through its Board of County Commissioners, and _____, its successors and assigns, hereinafter referred to as "Contractor".

WITNESSETH:

WHEREAS, the County has publicly submitted a Request for Proposals (RFP), #13-0209, for procurement of a firm to provide Transportation Operator services for the County's Transportation Disadvantaged Program, and the County's fixed route service for LakeXpress and ADA Complementary Services; and

WHEREAS, the County serves in the capacity as the Community Transportation Coordinator (CTC), as authorized under Chapter 427, Florida Statutes; and

WHEREAS, the Contractor desires to perform such services subject to the terms of this Agreement; and

NOW, THEREFORE, IN CONSIDERATION of the mutual terms, understandings, conditions, promises, covenants and payment hereinafter set forth, and intending to be legally bound, the parties hereby agree as follows:

- 1. RECITALS.** The foregoing recitals are true and correct and incorporated herein.
- 2. TERM; RENEWAL.** The term of this Agreement shall begin on October 1, 2013 and continue through September 30, 2016. Prior to or upon completion of the initial term of this Agreement, the County reserves the sole right to renew this Agreement for four (4) additional one (1) year terms. For the initial ninety (90) days of operations under this Agreement, the County will very closely monitor the performance of the Contractor against the Performance Standards, identified elsewhere herein, to ensure that standards have been established that are appropriate and fair. Any standard determined by the County to be unrealistic may be amended appropriately. Any Contractor performance that is determined by the County to be below an appropriately stated standard will require corrective action by the Contractor in accordance with the terms of this Agreement.
- 3. PRICE ADJUSTMENT.** Prior to completion of each exercised contract year, the County may consider any appropriate adjustment, upward or downward, to price based on changes in the following pricing index: CPI-W. It is each individual party's responsibility to

request any pricing adjustment in writing under this provision. A written request for adjustment should be submitted from the requesting party to the other thirty (30) calendar days prior to expiration of the then current contract year. The adjustment request must clearly substantiate the requested change. The written request for adjustment should not be in excess of the relevant pricing index change. If no adjustment request is received from the Contractor, and if the County has not in turn initiated any downward adjustment based on index changes, the County will assume that the Contractor has agreed that the following contract year may be exercised without pricing adjustment. Any adjustment request received after the commencement of a new contract period shall not be considered.

The County reserves the right to reject any written price adjustments submitted by the Contractor and/or to not exercise any otherwise available option period based on such price adjustments. Continuation of the contract beyond the initial period, and any option subsequently exercised, is a County prerogative, and not a right of the Contractor. This prerogative will be exercised only when such continuation is clearly in the best interest of the County.

4. SCOPE OF SERVICES. On the terms and conditions set forth in this Agreement, the County hereby engages the Contractor to provide the services identified in **Exhibit A**, attached hereto and incorporated herein by reference.

5. MAXIMUM CONTRACT AMOUNT. The Contractor shall not provide Services of an amount that would be greater in any particular contract year than the respective amount set forth below (the "**Not To Exceed Amount**"), unless otherwise agreed to in writing by the County. Along with each invoice, the Contractor will as provided in **Section 7(b)** below indicate for that particular year the percent of the Not To Exceed Amount billed to County with that invoice. The Contractor shall also not be required to provide Services in excess of said amount, except as otherwise provided in the Contract Documents.

<u>Contract Year</u>	<u>Not To Exceed Amount</u>
Year One: October 1, 2013 through September 30, 2014	\$_____
Year Two: October 1, 2014 through September 30, 2015	\$_____
Year Three: October 1, 2015 through September 30, 2016	\$_____

In the event the start date of October 1, 2013 is extended as set forth elsewhere herein, then the term "**Contract Year**" shall mean the twelve (12) months beginning with the Effective Date and on each anniversary date thereafter through September 30, 2016 (subject to the right of COUNTY to extend the Expiration Date, as set forth in **Section 6** below).

6. RIGHT OF COUNTY TO EXTEND EFFECTIVE DATE. If, for any reason, this Contract cannot commence on October 1, 2013, then the County will have the right, upon notification to the Contractor, to extend the Effective Date. In the event that County elects to have the Effective Date extended beyond October 1, 2013, each Contract Year shall nevertheless be for a period of twelve (12) months, and the Expiration Date set forth above of September 30, 2016 shall remain. If, however, the

Effective Date is on a date other than the first day of a calendar month, then the first Contract Year shall begin on said date and shall run through a month which is twelve (12) full months from the first day of the first month following said Effective Date. Thereafter, each Contract Year shall be for twelve (12) calendar months. In such case, the **Not To Exceed Amount** set forth in above for the first Contract Year and for the third Contract Year (if less than a full year) shall be adjusted accordingly. A written amendment shall be duly executed to extend the Effective Date.

7. PAYMENT.

(a) **Schedule of Fees.** County agrees to pay the Contractor for the Scope of Services the amount provided in the Schedule of Fees attached hereto as **Exhibit B** and incorporated herein by this reference. The Contractor will submit to County monthly its invoice in a form acceptable to County. Nothing herein shall prevent the County from reducing the level of service provided in the event that funding for the services is reduced. If the level of service is reduced, the contract amount will be reduced accordingly.

(b) **Maximum Contract Amount.** In no event shall the total amount to be paid by County pursuant to this Contract exceed the amounts stated herein without the written agreement of the County. Along with each monthly invoice, the Contractor will indicate the percent of the yearly Not To Exceed Amount has been billed to the County for that applicable year.

(c) **Procedure for Invoicing.** Invoices shall be submitted in duplicate to the Department of Community Services, Public Transportation Manager, at P.O. Box 7800, Tavares, Florida 32778. Each invoice shall contain the RFP number, a detailed description of services and fees, dates and locations of services, and confirmation of acceptance of the goods or services by the appropriate County representative.

(d) **Time of Payment by County.** The County shall make payment on all invoices in accordance with the Florida Prompt Payment Act, Chapter 218, Part VII, Florida Statutes. Failure to submit invoices in the prescribed manner will delay payment, and the Contractor may be considered in default of contract and the contract may be terminated.

(e) **Additional Information.** The County may request additional documentation from the Contractor prior to payment of any invoice or bill from the Contractor. The County may disallow and deduct any cost for which proper documentation is not provided.

(f) **Receipt of Payment by Contractor as Waiver Against COUNTY.** The acceptance by the Contractor, its successors, or assigns, of any progress or final payment due pursuant to this Contract, shall constitute a full and complete release of the County from any and all claims, demands, or causes of action whatsoever that the Contractor, its successors, or assigns may have against the County or in connection with the Services performed hereunder, through the date that the Services are rendered and for which such payment is made.

(g) **Subcontractors.** In the event the Contractor is utilizing any subcontractors for the furnishing of Services (which would only be as permitted in the Contract Documents), then, upon request by the County, the Contractor shall provide to the County copies of billings and other invoices which may be received from any such subcontractors and, in addition, the Contractor will obtain releases from time to time in favor of the County from any subcontractor(s) for work so performed by that subcontractor. The County shall have the right from time to time

to directly contact and discuss with the subcontractor any work performed by that subcontractor under the Contract Documents, but the County will not have any liability or obligation to said Subcontract to said subcontractor(s).

(h) **Annual Budget Amount.** The Contractor is aware that the County adopts an annual budget which will provide for the payment of the Contractor under this Contract, and the Contract is subject to the adoption by County of the annual budget.

(i) **Hourly Rates.** Any hourly rates quoted shall be deemed to provide full compensation to the Contractor for labor, equipment use, travel time, and any other element of cost or price. This rate is assumed to be at straight-time for all labor, except as otherwise noted. The Contractor shall comply with minimum wage standards, and/or any other wage standards specifically set forth in this agreement, and any other applicable laws of the State of Florida. If overtime is allowable under this agreement, it will [be](#) covered under a separate item.

8. CONTRACTOR'S OBLIGATIONS.

(a) **Furnishing of Materials and Labor.** The Contractor shall, for the consideration set forth herein, and at its sole cost and expense, as an independent contractor, provide all labor, materials, equipment, tools, supplies and incidentals necessary to perform this Contract in the manner and to the full extent as set forth in the Contract Documents or Scope of Services.

(b) **Standard of Care.** The Contractor shall furnish, provide or fulfill its obligations under this Contract in a professional manner to the reasonable satisfaction of the duly authorized representatives of the County, who shall have, at all times, full opportunity to monitor the services performed under this Contract.

(c) **Compliance with Applicable Requirements.** The Contractor shall conform to all applicable governmental requirements and regulations, whether or not such requirements and regulations are specifically set forth in the Contract Documents, including but not limited to those issued by the Occupational Safety and Health Administration (OSHA), the National Institute of Occupational Safety Hazards (NIOSH), and the National Fire Protection Association (NFPA). The Contractor in this regard understands that the County is a public agency which receives both federal and state funding and, if applicable, the Contract Documents and the performance by the Contractor shall be subject to any applicable rules and regulations promulgated by the Federal Transit Administration (FTA) and/or the Florida Department of Transportation (FDOT) and any of the other funding partners. The Contractor shall abide by the provisions contained in the Federal Clause Set for FTA Grant or Stimulus Programs, attached hereto and incorporated herein by reference as **Exhibit C**.

(d) **Payment of Taxes and Fees.** The Contractor shall pay license fees and all sales, consumer, use and other similar taxes relating to the Contract, and the matters to be performed thereunder. The County is exempt from payment of Florida sales and use taxes. The County will sign an exemption certificate submitted by the Contractor, if requested. The Contractor shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the County, nor is the Contractor authorized to use the County's tax exemption number in securing such materials. The County reserves the right to "direct buy" any materials to be furnished by the Contractor under the Contract Documents and, if the County so submits, then the parties will enter into an appropriate agreement reflecting said direct purchase, the effect of which will be for the County to directly purchase those materials, for the contract amount to be reduced by the amount of the purchase price paid by the

County for said materials, for those materials to be physically acquired and/or delivered to the Contractor, who will install them or deliver them as provided in the Contract Documents, with full warranties regarding those materials as if those materials were purchased from the Contractor. Any bonds furnished by the Contractor will apply to those materials.

(e) **FICA**. The Contractor shall be responsible for payment of its employee(s)' Federal Insurance Contributions Act benefits with respect to this Contract.

(f) **Permits and Approvals**. Unless otherwise expressly set forth in the Contract Documents, the Contractor shall be responsible to secure, at the Contractor's expense, all necessary permits, licenses and approvals. The Contractor shall promptly furnish copies of all such permits and approvals to the County as and when obtained.

(g) **Tests and Inspections**. The Contractor shall be responsible to coordinate all tests and inspections necessary for the proper execution and timely completion of this Contract.

(h) **Indemnification**. The Contractor understands that in performing the Services hereunder it will be responsible for the consequences of its own actions. Therefore, the Contractor agrees that it will indemnify, defend and hold harmless the County as well as the County's commissioners, officers, directors, employees, agents and representatives and each of the heirs, executors, successors and assigns of each of the foregoing from, against and in respect of all claims, liabilities, obligations, losses, costs, expenses, penalties, fines and judgments (at equity or at law) and damages whenever arising or accruing (including, without limitation, amounts paid in settlement, costs of investigation and reasonable attorneys' fees and expenses) arising out of or related to the Contractor's performance of the Services hereunder, including, without limitation, any acts or omissions with respect thereto.

(i) **Insurance**. Contractor shall purchase and maintain, at its expense, from a company or companies authorized to do business in the State of Florida and which are acceptable to the County, policies of insurance containing the following types of coverage and minimum limits of liability protecting from claims which may arise out of or result from the performance or nonperformance of services under this Agreement by the Contractor or by anyone directly or indirectly employed by Contractor, or by anyone for whose acts Contractor may be liable. Failure to obtain and maintain such insurance as set out below will be considered a breach of contract and may result in termination of the contract for default. Contractor shall not commence work under the Agreement until County has received an acceptable certificate or certificates of insurance evidencing the required insurance, which is as follows:

General Liability insurance on forms no more restrictive than the latest edition of the Occurrence Form Commercial General Liability policy (CG 00 01) of the Insurance Services Office or equivalent without restrictive endorsements, with the following minimum limits and coverage:

Each Occurrence/General Aggregate	\$5,000,000/5,000,000
Products-Completed Operations	\$5,000,000
Personal & Adv. Injury	\$5,000,000
Fire Damage	\$50,000
Medical Expense	\$5,000
Contractual Liability	Included

Automobile liability insurance, including owned, non-owned, and hired autos with the following minimum limits and coverage:

Combined Single Limit

\$5,000,000

Workers' compensation insurance based on proper reporting of classification codes and payroll amounts in accordance with Chapter 440, Florida Statutes, and/or any other applicable law requiring workers' compensation (Federal, maritime, etc). If not required by law to maintain workers compensation insurance, the Contractor must provide a notarized statement that if he or she is injured; he or she will not hold the County responsible for any payment or compensation.

Employers Liability insurance with the following minimum limits and coverage:

Each Accident	\$1,000,000
Disease-Each Employee	\$1,000,000
Disease-Policy Limit	\$1,000,000

Professional liability and/or specialty insurance (medical malpractice, engineers, architect, Contractor, environmental, pollution, errors and omissions, etc.) insurance as applicable, with minimum limits of \$1,000,000 and annual aggregate of \$2,000,000.

The following additional coverage must be provided if a dollar value is inserted below:

Loss of Use at coverage value:	\$ _____
Garage Keepers Liability at coverage value:	\$ _____

Lake County, a Political Subdivision of the State of Florida, and the Board of County Commissioners, shall be named as additional insured as their interest may appear on all applicable liability insurance policies.

The certificate(s) of insurance, shall provide for a minimum of thirty (30) days prior written notice to the County of any change, cancellation, or nonrenewal of the provided insurance. It is the Contractor's specific responsibility to ensure that any such notice is provided within the stated timeframe to the certificate holder.

If it is not possible for the Contractor to certify compliance, on the certificate of insurance, with all of the above requirements, then the Contractor is required to provide a copy of the actual policy endorsement(s) providing the required coverage and notification provisions.

Certificate(s) of insurance shall identify the applicable solicitation (ITB/RFP/RFQ) number in the Description of Operations section of the Certificate.

Certificate holder shall be:

LAKE COUNTY, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, AND THE BOARD OF COUNTY COMMISSIONERS.
P.O. BOX 7800
TAVARES, FL 32778-7800

Certificates of insurance shall evidence a waiver of subrogation in favor of the County, that coverage shall be primary and noncontributory, and that each evidenced policy includes a Cross Liability or Severability of Interests provision, with no requirement of premium payment by the County.

The Contractor shall be responsible for subcontractors and their insurance. Subcontractors are to provide certificates of insurance to the prime Contractor evidencing coverage and terms in accordance with the Contractor's requirements.

All self-insured retentions shall appear on the certificate(s) and shall be subject to approval by the County. At the option of the County, the insurer shall reduce or eliminate such self-insured retentions, or the Contractor or subcontractor shall be required to procure a bond guaranteeing payment of losses and related claims expenses.

The County shall be exempt from, and in no way liable for, any sums of money, which may represent a deductible or self-insured retention in any insurance policy. The payment of such deductible or self-insured retention shall be the sole responsibility of the Contractor and/or sub-contractor providing such insurance.

Failure to obtain and maintain such insurance as set out above will be considered a breach of contract and may result in termination of the contract for default.

Neither approval by the County of any insurance supplied by the Contractor or Subcontractor(s), nor a failure to disapprove that insurance, shall relieve the Contractor or Subcontractor(s) of full responsibility for liability, damages, and accidents as set forth herein.

(j) **Public Funding/Additional Terms or Conditions.** In the event that the County obtains funding, in whole or in part, from a public entity (e.g., Federal Transit Administration, Florida Department of Transportation, Department of Homeland Security, etc.) for the Services, there may be additional conditions imposed by said funding agency, including for example, a requirement that the Contractor comply with any rules and regulations promulgated by that funding agency. The County has attempted to identify in the RFP and the Contract the source of funding available to the County as well as any requirements of any such funding agency, but, in any event, the Contractor will be required to comply with any requirements imposed by the funding agency. The Contractor specifically agrees to so comply with said requirements, without any adjustments or increase in the amount to be paid to the Contractor, **provided, however,** if said requirement is not contained in the RFP or the Contract and said requirement is both material and would impose on the Contractor a material burden, then the Contractor would be entitled to submit to the County a change order for any additional cost of compliance by the Contractor.

(k) **Additional Information.** The Contractor, at the request of the County, shall further provide to the County such other information as the County may reasonably request from time to time. Further, the Contractor shall at the County's request meet and have its employees and representatives meet with the County from time to time, regarding any of the Services to be rendered under the Contract.

(l) **E-verify.** Contractor acknowledges and agrees that if the services provided under this Agreement are being supported in whole or in part by Federal and/or State funding, Contractor shall utilize the U.S. Department of Homeland Security's E-Verify system in accordance with the terms governing use of the system to confirm the employment eligibility of:

1. All persons employed by the Contractor during the term of this Agreement to perform employment duties within Lake County; and
2. All persons, including subcontractors, assigned by the Contractor to perform work pursuant to the contract.

(m) **Health Insurance Portability and Accountability Act (HIPAA).** Any person or entity that performs or assists the County with a function or activity involving the use or disclosure of “individually identifiable health information” (IIHI) –and/or “Protected Health Information” (PHI) shall comply with the Health Insurance Portability and Accountability Act (HIPAA) of 1996. HIPAA mandates for privacy, security and electronic transfer standards that include but are not limited to:

1. Use of information only for performing services required by the contract or as required by law;
2. Use of appropriate safeguards to prevent non-permitted disclosures;
3. Reporting to the County of any non-permitted use or disclosure;
4. Assurances that any agents and subcontractors agree to the same restrictions and conditions that apply to the Bidder/Proposer and reasonable assurances that IIHI/PHI will be held confidential;
5. Making Protected Health Information (PHI) available to the customer;
6. Making –PHI available to the customer for review and amendment; and incorporating any amendments requested by the customer;
7. Making PHI available to the County for an accounting of disclosures; and
8. Making internal practices, books and records related to PHI available to the County for compliance audits.

PHI shall maintain its protected status regardless of the form and method of transmission (paper records, and/or electronic transfer of data). The Contractor must give its customers written notice of its privacy information practices including specifically, a description of the types of uses and disclosures that would be made with protected health information.

The Contractor agrees to comply with, and assures the compliance of its employees and subcontractors with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a and the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The Contractor shall include these provisions in any subcontract associated with the completion of the Scope of Services hereunder.

(n) **Key Contractor Personnel.** The Contractor represents in executing this Agreement that each person listed or referenced in the Contractor’s proposal submitted in response to RFP 13-0209 is available to perform the services described for the County, barring illness, accident, or other unforeseeable events of a similar nature in which case the Contractor shall promptly provide a qualified replacement. In the event the Contractor desires to substitute personnel, the Contractor shall propose a person with equal or higher qualifications and each replacement person is subject to prior written

approval of the County. In the event the requested substitute is not satisfactory to the County and the matter cannot be resolved to the satisfaction of the County, the County reserves the right to terminate this Agreement for cause.

(o) **Local Office.** To ensure responsive support to the overall function, the Contractor shall maintain an office within the geographic boundaries of Lake County, preferably in the area that LakeXpress operates. The office shall be staffed by a competent company representative who can be contacted during normal working hours and who is authorized to discuss matters pertaining this Agreement. The County reserves the right to perform an inspection of the local office during the term of this Agreement, and to terminate this Agreement for cause if the size, location and overall functionality of the local office does not serve the best interests of the County.

(p) **Vehicle Inspection.** The Contractor and the County shall jointly inspect the interior and exterior each County-owned vehicle that will be utilized by Contractor in performance of the Scope of Services identified hereunder. A written inspection report shall be generated for each vehicle documenting its mechanical and overall condition prior to the Contractor placing that vehicle into service in the performance of the Contractor's obligations hereunder.

(q) **School Board Transportation.** In no event shall the Contractor be permitted to utilize any County-owned vehicles or County resources for provision of services to the Lake County School Board under the School Board's contract with Lifestream Behavioral Center.

9. NO DISCRIMINATION/REQUIREMENTS.

(a) **No Discrimination.** Neither the Contractor nor any of its subcontractors shall discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. The Contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of DOT-assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as the County deems appropriate.

(b) **DBE Requirements.** The Contractor is specifically advised that the County has established a Disadvantaged Business Enterprise ("**DBE**") policy and procedure that together set an overall race-neutral goal of 14.6% participation for such businesses under State or Federal grant funded projects. The Contractor covenants and agrees to comply with the requirements set forth in **Exhibit D** attached hereto and incorporated herein by this reference (the "**DBE Addendum**"). In the event that the Contractor is in breach of the DBE Addendum, in addition to any other damages and remedies available to the County in accordance with applicable law, the County may issue a termination for default proceeding pursuant to **Section 12** hereof.

10. PUBLIC RECORDS. County is a political subdivision of the State and is subject to Florida's Public Records Act, Chapter 119, Florida Statutes (the "**Public Records Act**"). It is possible that the Contractor, as a result of the Contract, may also be subject to the Public Records Act and, if so, the Contractor will promptly respond in accordance with said statute to any and all third party requests for "public records," as that term is defined in the Public Records Act. In regard to any such request, the Contractor will promptly notify County. County's determination as to the necessity of such response shall be presumptively correct.

11. COUNTY PROPRIETARY INFORMATION. The Contractor may, by virtue of this Contract, come into possession of certain non-publicly available information relating to County, which information may or may not be proprietary to County (the "**Information**"). In any event, the Contractor

agrees that any such Information is solely for the purpose of enabling the Contractor to fulfill its duties and obligations under this Contract, and the Contractor may not use any such Information for any other purpose whatsoever without the express, written permission of County. By way of illustration and not limitation, any such Information may not be used by the Contractor in submitting a Request for Proposal for any other purpose, whether to County or to any other third party. Upon the expiration or termination of the Contract, the Contractor will return to County any proprietary Information and will not, without County's prior written approval, keep or maintain any copies or transcripts thereof.

12. TERMINATION.

(a) **Default by Contractor.** County may, in its sole and absolute discretion, by written notice of default to the Contractor, terminate all or any part of this Contract if (i) the Contractor fails to perform the Services described herein, within the time specified herein or any extension hereof; or (ii) if the Contractor fails to satisfy any of the other provisions of the Contract, or so fails to make progress as to endanger performance of this Contract in accordance with its terms; and in either of these two circumstances does not cure such failure within a period of ten (10) days (or such longer period as County may in its sole discretion authorize in a writing signed by the County Procurement Manager) after receipt of notice from the County specifying such failure. In the event that County elects to waive its remedies for any breach by the Contractor of any covenant, term or condition of this Contract, such waiver by County shall not limit County's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract. In the event of termination for default, the County may procure another vendor to provide the services and the Contractor shall bear all costs of such re-procurement.

(b) **Termination by County for Convenience.** This Contract may be terminated by County in its absolute discretion, in whole or in part, whenever County shall determine that such termination is in its best interest. Any such termination shall be effected by delivery of a notice of termination by County to the Contractor, signed by the County's Procurement Manager or other official, specifying the extent to which performance of work under the Contract is terminated, and the date upon which such termination becomes effective; provided, however, that the Contractor shall be given a minimum of thirty (30) days' notice written notice. The Contractor shall be paid its costs, including contract closeout costs, and profit on Services performed by the Contractor up to the effective date of Contract termination. The Contractor shall promptly submit its claim for final payment to County.

(c) **Termination Due to Unavailability of Fund.** When funds are not appropriated or otherwise made available to support continuation of performance in a current or subsequent fiscal year, the contract shall be cancelled and the Contractor shall be reimbursed for the reasonable value of any non-recurring costs incurred amortized in the price of the supplies or services/tasks delivered hereunder.

(d) **Remedies for Default by Contractor.** If this Contract is terminated by County for default by the Contractor, County shall, except as otherwise expressly set forth in the Contract Documents, retain any and all remedies available for it against the Contractor, all of which remedies shall be cumulative. By way of illustration and not limitation, the County may proceed to obtain the remaining Services from another third party and thereby recover from the Contractor any "excess costs" incurred by County in so doing.

13. DISPUTE RESOLUTION. If there is any controversy or claim arising out of or relating to this Contract, or the breach thereof (collectively, a "**Legal Dispute**"), the parties agree that the County shall have the sole and exclusive discretion to elect which of the means set forth below that the County and the Contractor shall use to settle the Legal Dispute. At the sole discretion and option of the County,

the parties shall attempt to resolve any Legal Dispute by one or more of the following means (with the exception that (c) and (d) below are mutually exclusive) and abide by the provisions thereto:

(a) **Informal Meeting Between the Parties.** If the County decides that the parties should initially attempt to resolve the Legal Dispute informally, then the parties agree to a meeting between the County and the Contractor's CEO (or other such officer with equivalent binding authority) whereby both parties try in good faith to settle the dispute and reach an agreement. Any meeting required hereunder shall take place within the geographic boundaries of Lake County.

(b) **Mediation.** If the County decides that the parties should attempt to resolve the Legal Dispute by mediation, then the parties agree to try in good faith to settle the dispute by mediation which shall follow the practices and procedures as set forth by the Circuit Court of Lake County Florida, subject to the Florida Rules of Appellate Procedure 9.700-9.740 and conducted by a Florida Supreme Court Certified Mediator before resorting to judicial action. Any such mediation shall be held in Lake County, Florida. Arbitration shall not be permitted.

(c) **Court of Law.** If the County decides that a Legal Dispute should be resolved in a court of law, then any action, suit or proceeding arising in conjunction with the Legal Dispute shall be brought exclusively in the Fifth Judicial Circuit of the State of Florida or the United States District Court for the Middle District of Florida, Orlando Division, as appropriate.

Nothing in this Section shall in any way limit the right of the County to terminate this Contract under **Section 12** hereof.

14. NOTICES. All notices shall be made to the addresses listed provided below:

(a) The Contractor's primary point of contact for daily operations of the Services pursuant to this Contract is: _____

(b) The Contractor's primary point of contact for legal notice and authority to modify or act under this Contract is: _____

(c) The Contractor may appoint other individuals upon written notice to, and approval by, COUNTY. The Contractor shall provide written notice to COUNTY promptly with respect to any changes to the aforesaid contact information.

(d) As of the date hereof, COUNTY designates Ken Harley, Public Transportation Manager, Department of Community Services, whose address is P.O. Box 7800, Tavares, Florida 32778 (the "**Project Manager**") with respect to the Contractor's performance of this Contract, and who will also serve as the primary point of contact for operational issues. The County may change such designation upon written notice to the Contractor. Copies of any notices required hereunder shall be additionally sent to the County Manager at P.O. Box 7800, Tavares, Florida 32778.

(e) The Project Manager, and all other officers, employees, executives, agents and representatives of the County have only such authority to act on behalf of and bind the County to the extent granted to such individuals by the Lake County Board of County Commissioners, and no apparent authority of any such individuals shall be binding upon the County. No individual shall have the authority to act pursuant to this Contract or to modify or amend this Contract except in accordance with the County's Procurement Policies and Procedures, and such other policies and procedures that may be adopted by the County pursuant thereto. No such action, modification or amendment shall be valid or

binding upon COUNTY, if the authorizing representative of COUNTY has exceeded the authority actually granted to such individual by the COUNTY Governing Board.

15. MISCELLANEOUS.

(a) **Governing Law.** The parties mutually acknowledge and agree that this Contract shall be construed in accordance with the laws of the State of Florida, without regard to the internal law of Florida regarding conflicts of law.

(b) **Attorney Fees.** If any legal action or other proceeding is brought for the enforcement of this Contract, or because of an alleged dispute, breach, default, claim, or misrepresentation arising out of or in connection with any of the provisions of this Contract, the prevailing party or parties shall be entitled to recover its or their reasonable attorneys' fees (including paralegals' fees), court costs, expenses, and costs of experts and investigation, whether at trial, upon appeal, or during investigation by such prevailing party or parties in prosecuting or defending such legal action or other proceeding.

(c) **Waiver Of Jury Trial.** EACH PARTY HEREBY AGREES NOT TO ELECT A TRIAL BY JURY OF ANY ISSUE TRIABLE OF RIGHT BY JURY, AND WAIVES ANY RIGHT TO TRIAL BY JURY FULLY TO THE EXTENT THAT ANY SUCH RIGHT SHALL NOW OR HEREAFTER EXIST WITH REGARD TO THE CONTRACT DOCUMENTS, OR ANY CLAIM, COUNTERCLAIM OR OTHER ACTION ARISING IN CONNECTION THEREWITH. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS GIVEN KNOWINGLY AND VOLUNTARILY BY EACH PARTY, AND IS INTENDED TO ENCOMPASS INDIVIDUALLY EACH INSTANCE AND EACH ISSUE AS TO WHICH THE RIGHT TO A TRIAL BY JURY WOULD OTHERWISE ACCRUE.

(d) **Assignment by Contractor.** County has selected the Contractor to render the Services based in substantial part on the personal qualifications of the Contractor; as such, the Contractor may not assign or transfer any right or obligation of this Contract in whole or in part, without the prior written consent of County, which consent may be granted or withheld in the sole discretion of County. Any direct or indirect change in the ownership (legal or equitable) of a controlling and/or a majority interest of the Contractor, whether such change in ownership occurs at one time or as a result of sequential incremental changes, and whether said change is by sale, assignment, hypothecation, bequest, inheritance, operation of law, merger, consolidation, reorganization or otherwise, shall be deemed an assignment of this Contract subject to the consent of County. The Contractor may utilize subcontractors as otherwise permitted and provided in the Contract Documents. Any assignment or transfer of any obligation under this Contract without the prior written consent of County shall be void, *ab initio*, and shall not release the Contractor from any liability or obligation under the Contract, or cause any such liability or obligation to be reduced to a secondary liability or obligation.

(e) **Captions and Headings.** The captions and headings provided herein are for convenience of reference only and are not intended to be used in construing the terms and provisions hereof.

(f) **Number And Gender.** Whenever herein the singular or plural is used the same shall include the other where appropriate. Words of any gender shall include other genders when the context so permits.

(g) **Multiple Counterparts.** This Contract may be executed in a number of identical counterparts each of which is an original and all of which constitute collectively one agreement. In

making proof of this Contract in any legal action, it shall not be necessary to produce or account for more than one such counterpart.

(h) **Survival**, Should any provision of this Contract be determined to be illegal or in conflict with any law of the State of Florida, the validity of the remaining provisions shall not be impaired.

(i) **No Third-Party Beneficiary**. It is specifically agreed that this Contract is not intended by any of the provisions of any part of this Contract to establish in favor of any other party, the public or any member thereof, the rights of a third-party beneficiary hereunder, or to create or authorize any private right of action by any person or entity not a signatory to this Contract to enforce this Contract or any rights or liabilities arising out of the terms of this Contract.

(j) **Right to Audit**. The County reserves the right to require Contractor to submit to an audit by any auditor of the County's choosing. Contractor shall provide access to all of its records, which relate directly or indirectly to this Agreement at its place of business during regular business hours. Contractor shall retain all records pertaining to this Agreement and upon request make them available to the County for five (5) years following expiration of the Agreement. Contractor agrees to provide such assistance as may be necessary to facilitate the review or audit by the County to ensure compliance with applicable accounting and financial standards. This provision is hereby considered to be included within, and applicable to, any subcontractor agreement entered into by the Contractor in performance of any work hereunder.

If an audit inspection or examination pursuant to this section discloses overpricing or overcharges of any nature by the Contractor to the County in excess of one percent (1%) of the total contract billings, in addition to making adjustments for the overcharges, the reasonable actual cost of the County's audit shall be reimbursed to the County by the Contractor. Any adjustments and/or payments which must be made as a result of any such audit or inspection of the Contractor's invoices and/or records shall be made within a reasonable amount of time, but in no event shall the time exceed ninety (90) days, from presentation of the County's audit findings to the Contractor.

16. Amendment of Contract. This Contract may not be modified or amended without the prior written consent of the party to be charged by said amendment or modification. This provision may not itself be changed orally. The Contractor specifically is aware and understands that any material or substantial change to this Contract may require written approval of County for any such change to be valid.

17. Sovereign Immunity. The Contractor understands and is aware that County is a political subdivision of the State of Florida and is, therefore, entitled to the benefits of "sovereign immunity" in accordance with Florida Law, including Section 768.28, *Florida Statutes*. In that regard, nothing contained in this Contract or in any of the dealings between the Contractor and the County shall at any time be deemed to be or in any event be a waiver by the County of the provisions of sovereign immunity which waiver, to be effective at all, must be expressly and specifically approved by the County. Accordingly, no document executed by any COUNTY representative will be effective in any way to waive or modify the provisions of sovereign immunity in connection with COUNTY.

18. Entire Agreement. This Contract, including the Contract Documents referenced above, together with any Exhibits or attachments hereto constitutes the entire agreement between the parties, and incorporates all discussions between the parties. This Contract may not be amended or modified except by a writing signed by the party to be charged.

19. Exhibits. The following exhibits are attached hereto and incorporated by reference as material parts of this Agreement:

Exhibit A:	Scope of Services
Exhibit B:	Schedule of Fees
Exhibit C:	Federal Clause Set for FTA Grant and Stimulus Programs

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement on the respective dates under each signature: COUNTY through its Board of County Commissioners, signing by and through its Chair, authorized to execute same by Board Action on the ____ day of _____, 2013, and by CONTRACTOR through its duly authorized representative.

CONTRACTOR

Name/Title: _____
License # _____

Agreement between Lake County and _____ for Transportation Operator; RFP 13-0209

COUNTY

ATTEST:

Neil Kelly, Clerk of the
Board of County Commissioners
of Lake County, Florida

Leslie Campione
Chairman

This ____ day of _____, 2013.

Approved as to form and legality:

Sanford A. Minkoff
County Attorney

EXHIBIT A
SCOPE OF SERVICES

EXHIBIT B
SCHEDULE OF FEES

EXHIBIT C
FEDERAL CLAUSE SET FOR FTA GRANTS

EXHIBIT D
DBE ADDENDUM



**Title: DISADVANTAGED AND SMALL BUSINESS ENTERPRISE
POLICY FOR PROJECTS UTILIZING DEPARTMENT OF
TRANSPORTATION FUNDING OR GRANTS**

Number: LCC-80
Cancels: LCC-80 approved
4/15/2008
Approved: 6/12/2012

I. OBJECTIVE

- A. Lake County BCC will take affirmative steps to ensure Disadvantaged Business Enterprises (DBE) and Small Business concerns have the maximum opportunity to participate in procurement and contracting opportunities financed in whole or in part with funds in excess of \$250,000 derived from Federal or State of Florida Department of Transportation (DOT) sources.
- B. In connection with the performance of this program, Lake County BCC will use its best effort to ensure that DBEs and small businesses are afforded an opportunity to compete for DOT assisted contracts and all associated subcontract work let by, or are for, the benefit of Lake County BCC.
- C. General objectives of this policy are:
 - 1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts for Lake County public transit-related projects;
 - 2. To create a level playing field on which DBEs and small businesses can compete fairly and equally for DOT-assisted contracts;
 - 3. To ensure that Lake County BCC's DBE and small business programs are narrowly tailored in accordance with applicable law;
 - 4. To ensure only firms that fully meet the eligibility standards set forth in 49 CFR Section 26 are considered to be DBEs and/or small businesses within the context of this policy; and
 - 5. To ensure that there are no administrative barriers to the participation of DBEs and small business concerns in DOT-assisted contracts awarded in support of Lake County public transit-related projects.

II. DEFINITIONS AND REFERENCES

- A. Title 49, U.S. Code of Federal Regulations (CFR), Section 26
- B. Lake County BCC Procurement Policy – LCC-18
- C. Lake County DBE Policy and Program Manual
- D. Lake County Purchasing Procedure Manual (LC-7)

III. DIRECTIVES

- A. Lake County BCC will establish the position of a DBE Liaison Officer. The DBE Liaison Officer will administratively fall within the Procurement Services Division. The DBE Liaison Officer will be responsible for the following duties:
 - 1. Establish appropriate goals;
 - 2. Monitor and periodically report status of attainment of goals;
 - 3. Identify potential MBE sources for individual purchases;
 - 4. Develop contractual provisions directing and governing MBE subcontractor utilization;
 - 5. Identify additional processes for goal attainment if required;
 - 6. Establish and apply measures intended to promote and maximize the use of small business concerns as an element of the overall DBE Program, and
 - 7. Other duties specifically set forth in the Lake County DBE Manual.
- B. Pursuant to 49 CFR 26.45, Lake County BCC is required to establish an annual overall goal on a fiscal year basis for the participation of DBEs in all budgeted contracts utilizing Federal DOT financial assistance. The specific goal for the County will be developed on an annual basis using the procedures outlined in 49 CFR 26, and will be published in the Lake County DBE Policy and Program Manual. The annual overall goal shall be expressed as a percentage of the total amount of Federal DOT funds Lake County BCC anticipates expending in the fiscal year. The Lake County BCC's annual overall goal represents the relative quantity of certified DBEs that are available to participate in contracting opportunities and reflects the amount of DBE participation that Lake County BCC would expect absent the effects of discrimination. Lake County BCC intends to meet this goal to the maximum extent feasible through the race-neutral measures described below. Where race-neutral measures are inadequate to meet the annual overall goal, Lake County BCC may establish specific contract goals for particular projects with subcontracting opportunities.
- C. Lake County BCC intends to meet the established annual DBE goal by utilization of two primary race-neutral measures as follows:
 - 1. Lake County will ensure that all appropriate DBE firms will be included in the solicitation process when the Lake County BCC procurement office

issues a solicitation for goods, services, or construction that are funded in full or in part by Federal DOT grants that require such specific effort. Lake County will use the Unified Certification Program (UCP) DBE Directory published by the Florida Department of Transportation for this purpose. A list of certified UCP DBEs is maintained by the Department's Equal Opportunity Office at <http://www.bipincwebapps.com/biznetflorida/>.

2. Lake County will ensure that all solicitations and resultant contracts issued by the Lake County BCC procurement office for goods, services, or construction that are funded in full or in part by federal DOT grants will include subcontractor selection requirements that support the goal established above.
- D. That Lake County initiate and complete all appropriate measures to support full compliance with the spirit and intent of directives pertaining to the utilization of the small business concerns within the contracting programs funded by the Department of Transportation.

IV. RESERVATION OF AUTHORITY

The authority to issue or revise this Policy is reserved to the Lake County Board of County Commissioners.



Leslie Campione
Chairman, Board of County Commissioners
Lake County



**Title: DISADVANTAGED AND SMALL BUSINESS
ENTERPRISE PROCEDURE FOR PROJECTS
UTILIZING DEPT OF TRANSPORTATION (DOT)
FUNDING OR GRANTS**

Number: LC-44
Cancels: LC-44 dated 6/12/12
Approved: 9/28/12
Originator: Procurement
Services
Review: 9/28/14

I. PURPOSE AND SCOPE

The purpose and scope of this Disadvantaged and Small Business Enterprise Program Manual is to ensure nondiscrimination in the award and administration of DOT-assisted contracts for Lake County public transit-related projects, to create, a level playing field on which Disadvantaged and Small Business Enterprises can compete fairly and equally for DOT-assisted contracts, and to ensure that there are no administrative barriers to the participation of Disadvantaged and Small Business Enterprises in DOT-assisted contracts awarded in support of Lake County public transit-related projects

II. OVERVIEW

The attached procedure provides a general overview of County Policy LCC-80 titled as above, and implementing detail in regards to general and administrative requirements associated with the specific program with specific attention to statements of goals and reporting requirements. This specific update of the procedures provides for a minor revision to the previously established DBE participation goal.

Additional copies of the procedures may be obtained from the Office of Procurement Services or by accessing the County's policy and procedure intranet pages.

III. RESERVATION OF AUTHORITY

The authority to issue or revise this Procedure is reserved to the County Manager.



David Heath
County Manager
Lake County

